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SUBJECT: INVESTMENT CLIMATE STATEMENT MALI: FY 2009

REF: 08 STATE 123907

¶1. In response to reftel, this cable provides the 2009 Investment Climate Statement for Mali.

¶2. Investment Climate Statement:

¶A. Country Investment Policies and Practices.

A.1. Openness to Foreign Investment:

The Malian government has made efforts to encourage foreign investment. It treats domestic and foreign direct investment equally. The series of enhanced structural adjustment facility (ESAF) agreements signed by the IMF/World Bank and Mali and in place since 1992 encourages the mobilization of external resources to boost investment. The government's national strategy to fight poverty presented to the IMF, World Bank and other donors emphasizes the role of the private sector in developing the economy.

In the framework of past structural adjustment programs, the investment, mining, commerce and labor codes encourage investment and seek to attract foreign investors in particular. The Malian government has instituted policies promoting direct investment and export-oriented businesses. Mali guarantees the repatriation of capital and profit.

Foreign investors can own 100 percent of any businesses they create. They can also purchase shares in parastatal companies being privatized or in other local companies. Foreign companies may also start joint-venture operations with Malian enterprises.

Foreign investors go through the same screening process as domestic investors. In theory, all investors go through the "guichet unique" (one-stop procedure) to have a business application processed. However, the International Finance Corporation's (IFC) Doing Business 2009 report ranked Mali 162 of 181 countries on the ease of starting a business, noting that it takes an average of 11 procedures and 26 days to register and open a business in Mali. Criteria for granting authorization under the investment code include the size of capital investment, the potential for value-added, and the level of job creation.

Foreign investors sometimes report that tax collectors interpret tax laws to discriminate against foreign companies or companies with foreign capital. The tax system remains complicated in spite of ongoing efforts to improve it.

The Investment Code gives the same incentives to both domestic and foreign companies for licensing, procurement, tax and customs duty deferrals, export and import policies, and export zone status if all production is to be exported. Export taxes, import duties, and price controls have been reduced or eliminated as part of ongoing economic reforms. Work is proceeding to harmonize the investment for all WAEMU member countries. The investment guide approved by the government in 2007 provides useful information on how to do business in Mali and helps protect potential investors, whether domestic or foreign. The Investment Code was revised in 2005 to include more incentives. Companies benefiting from the new code may be exempted from paying duties on imported equipment and machinery. They may also get tax exemption on the use of local raw materials. The Code also allows for the negotiation of specific incentives on a case by case basis. In September 2005, the government created a new agency, Agence pour la Promotion de l'Investissement (API-Mali), in charge of investment and export zone management to facilitate the creation of domestic and foreign companies. Mali has also created, with World Bank support, a Presidential Investment Council. This Council is comprised of foreign and national businesspeople, and is aimed at improving the business climate in Mali and identifying best prospects for investment.

A.2. Conversion and Transfer Policies:

The Investment Code allows the transfer of funds associated with investments, including profits.

As a West African Economic Monetary Union (WAEMU) member, Mali uses the CFA franc currency. Linked to the Euro, the CFA is fully

convertible at a rate of Euro 1 = CFA franc 655.957. No parallel conversion market exists because the CFA franc is a fully convertible currency supported by the French treasury, which ensures a fixed rate of exchange.

As of January 2009 the U.S. Embassy purchased local currency at a rate of approximately CFA franc 495 per one U.S. dollar. The U.S. Embassy obtains currency through the Charleston Financial Service Center in Charleston, South Carolina, and a local bank.

The CFA franc was devalued in January 1994. According to officials from the central bank BCEAO, devaluation in the short term is unlikely. In the medium and long term, however, the political situation in Cote d'Ivoire and its impact on the economy of the WAEMU countries will continue to affect the stability of the CFA.

There are no limits on the inflow or outflow of funds for remittances of profits, debt service, capital, or capital gains. In the CFA zone there is no restriction on the export of capital provided that adequate documentation to support a transaction is presented. Most commercial banks have direct investments in western capital markets.
Central bank rules require that all remittances go through its channels, with supporting commercial documents required. Exceptions are occasionally made as part of incentive agreements, as in one case where the government allowed a British mining company to have an offshore bank account. No physical transfer of funds is authorized outside the borders of the CFA zone. It takes less than a week (usually 3 working days) to remit funds abroad.
Mali is also a member of the larger Economic Community of West African States (ECOWAS). ECOWAS encourages investment between and among member countries to promote economic integration by eliminating trade barriers. Fair competition, profitability and economic benefits are criteria used to assess eligibility for investment incentives.

A.3. Expropriation and Compensation:

Expropriation of private property for public purposes is rare. The only known expropriation against a foreign company occurred in the early 1960s. By law, the expropriation process should be public and

transparent and in accordance with the principles of international law. Compensation based on market value is awarded by court decision. The Malian constitution calls for an independent judiciary, substantially reducing the risk of "creeping expropriation".

The government may expropriate property for public projects (major road or dam construction), in cases of bankrupt companies that have had a government guarantee for their financing, or in certain cases when a company has not complied with the requirements of an investment agreement with the government. In July 2000 the government expropriated land in the vicinity of the Bamako city airport for air safety reasons. Notifications of the expropriation were sent via direct mail and published in public and private media.

A.4. Dispute Settlement:

Disputes occasionally arise between the government and foreign companies. Some cases involve wrongdoing on the part of companies; some involve corrupt government officials.

In November 1991, an independent commercial court was established with the encouragement of the U.S. government to expedite the handling of business litigation. Commercial courts are located in Bamako, Kayes, and Mopti. In areas where there is no commercial court, disputes are first heard at local courts known as "Tribunal de Premier Instance." Since inception, the commercial court has handled cases involving foreign companies. The court is staffed by magistrates assisted by elected Malian Chamber of Commerce and Industry representatives. Teams composed of one magistrate and two Chamber of Commerce and Industry representatives conduct hearings. The magistrate's role is to ensure that decisions are rendered in accordance with applicable commercial laws, including internationally recognized bankruptcy laws, and that court decisions are enforceable under the law.

The judicial system is slow and inefficient and widely reputed to be corrupt. Low salaries and inadequate resources compromise the impartiality of the judicial system. In 2006 an appeals court ordered an American company to pay damages to a Chinese company, even though it was the American company that had originally filed charges against the Chinese firm alleging trademark infringement. In January 2009 the Malian Supreme Court overruled the appeals court, and sent the case back to the appeals court for a new hearing. Litigation in this case is ongoing. U.S. companies, bound by anti-corrupt practices legislation, may feel at a disadvantage when it comes to legal proceedings vis-`-vis other foreign companies that are not bound by similar legislation.

The Investment Code allows a foreign company that has a signed agreement with the government to refer to international arbitration any case that the local courts are unable to resolve.

Mali is a member of the African Organization for the Harmonization of Business Law (OHADA) and has ratified the 1993 Treaty creating the Joint Arbitration Court. OHADA has a provision for allowing litigation between foreign companies and domestic companies or the government to be tried in an appellate court outside of Mali. Mali is a member of the International Center for the Settlement of Investment Disputes (ICSID - also known as the Washington Convention). Mali is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitrage awards. Mali has been a member of the World Bank Multilateral Investment Guarantee Agency (MIGA) since 1990.

A.5. Performance Requirements/Incentives:

The investment code offers incentives to companies that reinvest profits to expand existing business or diversify in another relevant sector. The code also encourages the use of locally sourced inputs which could lead to a tax exemption. Local value-added is one

criteria used for approving investment projects and in calculating a tax exemption period.

There is no requirement that Malians own shares in a foreign investment or that foreign equity be reduced over time. In the case of joint ventures with the government, the government share may not exceed 20 percent ownership. OHADA regulations specify that a company with less than 35 percent government equity is legally considered a private company.

Because most businesses are located in the capital city, the Investment Code encourages the establishment of new businesses in other areas. Incentives include income tax exemptions for 5-8 year periods, reduced-energy prices, and the installation of water supply, electric power and telecommunication lines to areas lacking water, energy and telecommunication facilities.

Title V of the Investment Code relates to free trade zones. Any company, domestic or foreign, that plans to export at least 80 percent of its production is entitled to tax-free status. Production that is not exported would be subject to taxation. Mali currently has no dedicated free trade zones.

The National Assembly approved a new oil code in June 2004. The code is based on incentive, stability and competition. The initial span allowed for oil prospecting is four years renewable for two successive periods. Prospecting and exploitation permits, as well as their renewal, are subject to the payment of fixed taxes ranging from one million to ten million CFA francs (approximately USD 1,900 to 19,000). In addition, permit holders are liable for the payment of charges on the production of hydrocarbons and a tax of 35 percent from the industrial and commercial profits. Yet, they benefit from tax exemption on the petroleum and hardware-based products in compliance with the oil list set by the government of Mali. A permit holder exploits the oil deposit and the government collects a charge varying between 7.5 and 15 percent, from a production of between 50,000 and over 500,000 barrels per day.

On July 14, 2004, the government created an authority in charge of oil research promotion in Mali (AUREP). This new agency has been tasked with drafting, planning and implementing oil research promotion programs, and collecting data on oilfields. The agency is

also the interface with the government for private sector investors.

The government has identified priority sectors for furthering economic development. Special incentives are offered for investment in the following areas:

--Agribusiness
--Fishing and fish processing
--Livestock and forestry
--Mining and metallurgical industries
--Water and energy production industries
--Tourism and hotel industries
--Communication
--Housing development
--Transportation
--Human and animal health promotion enterprises
--Vocational and technical training enterprises
--Cultural promotion enterprises

Job creation is an important criteria used in determining tax exemptions and other incentives. Employers who hire young graduates can pay reduced rates of social security taxes.

A.6. Right to Private Ownership and Establishment:

Domestic and foreign investors share equal rights to private ownership and establishment as long as they go through the approval process and abide by relevant regulations.

The government allows the free market to determine prices. Domestic

and foreign companies compete on an equal basis with public enterprises. The government's privatization program for state enterprises creates opportunities for both domestic and foreign private firms to acquire those entities through open international bidding. In the past several years, the government has privatized parastatal enterprises including the cotton processing company, Huilerie Cotonniere du Mali (HUICOMA); Mali International Bank (BIM); and the telecommunications company, Societe des Telecommunications du Mali (SOTELMA). The government is currently in the process of privatizing the cotton marketing parastatal, Compagnie malienne pour le developpement des textiles (CMDT) and the Malian Energy Company (EDM). In some cases, the local media have questioned the transparency of the bidding and contracts award process.

A.7. Protection of Property Rights:

Property rights are nominally protected in Mali. The government created a new agency, Malian Center for the Promotion of Industrial Property, to replace the National Manufacturing Office through its Department for Intellectual Property Rights. The Center is charged with implementing the legal system of protection, including the World Trade Organization (WTO) TRIPS agreement. This agency is a member of the African Property Rights Organization (OAPI) and works with international agencies recognized by the United Nations Industrial Development Organization (UNIDO), which are concerned with these issues. Patents, copyrights, and trademarks are covered.

These structures notwithstanding, property rights are not always protected. A recent example is that of a U.S. herbicide manufacturer, which has been mired in a three-year long legal battle in the Malian courts with a Chinese company allegedly selling the same products under a different brand name. In spite of a recent favorable ruling by the Supreme Court, the case was remanded to a lower court and the outcome of the case remains unclear.

A.8. Transparency of the Regulatory System:

As reflected in agreements with the IMF and World Bank, the government of Mali has adopted a transparent regulatory policy and effective laws to foster competition. The commerce and labor codes adopted in 1992 are designed to meet the requirements of fair competition, to ease bureaucratic procedures, and to facilitate the hiring and firing of employees. The Investment Code shortens the

application process to establish a business (maximum 30/45 days turnaround time), and it favors investments that promote handicrafts, exports, and labor-intensive businesses. The Mining Code encourages investments in medium and small mining enterprises, awards two-year exploration permits free of charge, and does not require a commitment from the exploring firm to lease the area explored thereafter. Mali is a member of the African Organization for the Harmonization of Business Practices (OHADA) and implements the SYSCOA accounting system which harmonizes business practices among several African countries consistent with international norms.

A.9. Efficient Capital Markets and Portfolio Investment:

WAEMU statutes determine the banking system in Mali. The WAEMU central bank, Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), is located in Dakar, Senegal. Commercial banks enjoy considerable liquidity. They tend to prefer investing funds in western capital markets, thereby reducing credit available to local entrepreneurs. The government and WAEMU have engaged in a restructuring of the banking system to increase the capital available to local investors. The government's privatization efforts should make more credit available to the private sector. External financing and guarantee programs are alternatives to local bank credit.

Portfolio investment is not a current practice, although the legal and accounting systems are now transparent enough and are similar to the French system. In 1994 the government instituted a system of treasury bonds available for purchase by individuals or companies. The payment of dividends or the repurchase of the bonds may be done through a compensation procedure offsetting corporate income taxes or other sums due to the government.

The WAEMU stock exchange program based in Abidjan opened a branch in each WAEMU country, including Mali. To date, no Malian company is listed on the stock exchange. The privatization programs of the electric company EDM and the state-owned telecommunications entity SOTELMA and cotton ginning company CMDT offer good prospects for some state-owned companies to be listed on the WAEMU stock exchange.

The Bamako-based office of the Societe de Gestion et d'Intermediation (SGI) has conducted awareness campaigns to educate the business community. Domestic companies are now looking into the possibility of applying to be on the list of stock exchange.

The government of Mali has agreed to participate in the Sovereign Credit Rating Program sponsored by the State Department. The U.S. Treasury Department provided technical assistance to the Malian Ministry of Economy in this endeavor with the support of the U.S. State Department. The firm Fitch completed its rating and awarded a B- to Mali. Parallel to this effort, Standard & Poor's awarded Mali B ratings in 2004 and 2005 through a UNDP-funded program.

A.10. Political Violence:

Mali's multi-party democracy, now almost two decades old, has consistently encouraged private enterprise and investment. Occasional student and labor strikes and small-scale political demonstrations have sometimes resulted in political vandalism and violence, but not enough to substantially impact the investment climate. President Amadou Toumani Tour was first elected in 2002. Observers considered the 2002 elections to be an important test for Malian democracy as the first democratically elected President, Alpha Oumar Konar, kept his word and turned power over to newly elected President Toure.

President Tour was reelected in 2007 with more than 70 percent of the vote. Several political parties contested the July 2007 legislative elections, and the three major parties got more than 90 percent of National Assembly seats. The elections were considered free, fair, and transparent. Municipal elections are scheduled for April 2009.

Northern Mali has traditionally seen occasional friction between pastoral and sedentary populations. Until May 2006, the Malian

government had effectively consolidated the peace following the 1990-1995 rebellion in the northern regions. The government, along with international donors and United Nations organizations, supports the socioeconomic reintegration of refugees and former combatants. After several years of relatively peaceful coexistence, Tuareg unrest in northern Mali restarted in May 2006. In May 2006, a group of former Tuareg combatants previously reintegrated in the regular armed forces attacked two Malian military facilities in the northern towns of Menaka and Kidal. In July 2006, the government of Mali and the rebels signed a peace agreement known as the Algiers Accords. In 2007, a dissident group of Tuareg rebels broke with this agreement by attacking Malian troops and taking several members of the Malian military hostage. In 2008 Tuareg rebel groups conducted attacks in the regions of Kidal, Gao and the northern portions of the regions of Segou and Koulikoro.

The Algeria based terrorist group, Al Q'aida in the Islamic Maghreb (AQIM), continues to use isolated regions of northern Mali as a safe haven. Malians practice an open and tolerant form of Islam, and extremist ideologies like those espoused by AQIM have made few inroads into Malian society. There is limited infrastructure and business in the northern desert regions, and past troubles in the

north have had little direct impact on business activities in the rest of the country. Mali maintains good relations with each of its several neighbors.

A.11. Corruption:

Corruption is considered a crime punishable under the penal code. This notwithstanding, there are widely circulated reports of bribery cases on large contracts and investment projects.

Corruption poses an obstacle to FDI. Government officials often solicit bribes in order to complete otherwise routine procedures. Using assessments by the African Development Bank, the World Bank, and the World Economic Forum, Transparency International assigned Mali a score of 3,1 on a 10 to 0 scale, zero representing the lowest score.

Corruption seems most pervasive in government procurement and dispute settlement. Paying government procurement agents a five to ten percent commission is common practice. To fight this, the government requires any procurement contract to be inspected by the "Direction Generale des Marchs Publiques" that has to determine whether the procedure meets the requirements of fairness, price competitiveness, and quality standards. During his swearing in ceremonies in June 2002 and June 2007, and in subsequent meetings with the donor community, President Tour defined elimination of corruption as one of his highest priorities.

The President created an Office of the Auditor General in 2004. The Office of the Auditor General is an independent agency tasked by the President to audit any public funding-related operation. After the President appointed the Auditor General, roughly one hundred support personnel, including experienced auditors, were hired. In 2006, the Office of the Auditor General conducted a major investigation at the Niger Valley Authority (Office du Niger) where they found that more than USD 1 million was missing in just one department out of six. Subsequently, several regional directors were suspended and are awaiting trial. Likewise, in 2007 and 2008, the Auditor General conducted investigations in several departments, including the Tax and Customs Offices of Department of Finance, several government-run hospitals, the gold mining sector, and the cotton marketing parastatal company CMDT. Several officers and their private sector accomplices were accused of embezzlement and economic crimes. None of these cases have yet proceeded to trial. According to the Auditor General's report published in July 2008, approximately CFA 21 billion (USD 42 million) have been recovered of a total of CFA 31 billion (USD 63 million) initially identified as missing in 2007.

Questionable judgments in commercial cases have occasionally been successfully overturned at the court of appeals. Yet there continue to be complaints from the domestic and foreign business community about the judiciary. During a televised debate in March 2001, the mayor of Bamako harshly criticized the judiciary, and concluded by saying that: "everybody knows that magistrates are corrupted and one can literally purchase a trial when one is rich." As a consequence of this public statement, the magistrate's union brought an action

for libel against the Mayor and the public television director who allowed the debate to be broadcast publicly. The Mayor and the Director were convicted and sentenced to pay a symbolic 1 CFA franc. They appealed this decision and eventually the case was settled out of court. In 2002, the Bar Association President stated publicly that: "the judges are independent from everything but dirty money." In 1998, the executive decided to tackle the problem by creating a national commission in charge of reorganizing the judicial system. In February 1999, a national forum on the judiciary made recommendations as to ways of modernizing the judiciary. In December 2001, the National Assembly passed amendments to the penal code criminalizing corruption. In 2007, The Auditor General organized a discussion with Magistrates to find ways by which the Office of the Auditor General and the judiciary could work to bring "economic criminals" to trial.

¶B. Bilateral Investment Agreements

Mali has signed the CIRDI treaty sponsored by the World Bank group. During the past six years, Mali has signed investment protection agreements with South Africa, Algeria, Senegal, and Libya.

¶C. OPIC and Other Investment Insurance Programs

Since October 1997, Mali has been eligible for the U.S. Exim Bank program for short and medium term financing for the private sector. Mali is also eligible for certain OPIC programs. Mali has been a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA) since 1990.

¶D. Labor

Labor is widely available, albeit at varying skill levels. Many skilled workers have been laid off from state-owned companies and are unemployed or hold jobs well below their skill level. Many recent college and high school graduates are job seekers. Unfortunately, skilled labor is insufficient in sectors with the highest growth rate such as mining and construction.

Workers have the right to unionize. Relations between labor and management have been difficult for the past four years, especially in new industry sectors such as gold mining. Although a warning notice for strikes is not required in the private sector, mediation procedures are generally followed before resorting to a strike. The government has signed the ILO agreement protecting the rights of workers. Although the labor code adopted in 1992 improved hiring and firing procedures, it still requires simplification. Powerful labor unions play an important role in national affairs. Compensation plan negotiations and firing procedures are very long and closely scrutinized by the judiciary. Labor has constituted one of the major difficulties encountered recently by employers, both national and foreign. Although not a requirement, it is advisable to have regular contacts with the labor inspectors, especially when concluding new hiring contracts or considering terminations or reductions in force.

¶E. Foreign Trade Zones/Free Ports

There is no discrimination between foreign-owned firms and host country entities in terms of investment opportunities. Companies (domestic or foreign) that export at least 80 percent of their production are entitled to the status of "zone franche" (tax-free status). As such, they benefit from duty free-status on all equipment and other input they need for their operations. To date, there are no dedicated free trade zones in Mali.

¶F. Foreign Direct Investment Statistics

Companies from Japan, Australia, Canada, and South Africa have made significant investments in the mining sector. France, Germany, and China have made significant investments in the manufacturing and food processing sectors. Foreign direct investment in Mali in the manufacturing industry sector was estimated at USD 2.3 million in 1994, USD 5 million in 1995, USD 8 million in 1996, and USD 15 million in 1997. Investment slowed in 1998, 1999 and 2000 because of legislative and municipal elections and the shortage of electric power and the high cost of energy in 2000. Investment picked up again in 2001, mostly in relation to the African soccer championship that took place in Mali in February/March 2002. In 2002/2003, more

investment was made, especially in the textile, housing and agro-business sectors. In 2004, South African Investors and others pledged to invest about USD 100 million in agro-business. The investment was later postponed to FY 2006 and is likely to be implemented during the summer of 2009. About USD 40 million more investment was placed into the economy during FY 2004. Half of this was from a U.S. company in the railroad sector. In 2007, the company, faced with management problems and labor pressure, withdrew by selling its shares to a consortium composed of European and African investors with significant operational experience in Africa. Foreign Direct Investment picked up during FY 2005 for a total estimated at more than USD 120 million and continued in FY 2006.

Much of this can be attributed to advances in the gold mining sector and oil exploration by South African, Australian, Italian, Venezuelan and Chinese companies. One American company signed an agreement with the government to do oil exploration in central and northern Mali. Another American company has been exploring, together with South African investors, a large-scale sugar growing project in Mali; intensive efforts over the years had not yet brought the project to fruition.

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